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News Room

Speeches

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Announcement by Chief Commissioner, Jennifer Lynch, Q.C., at the Canadian Association of Statutory Human Rights Agencies (CASHRA) 2008 Annual Conference

Speaking notes for

Jennifer Lynch, Q.C.

Chief Commissioner
of the
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Hate Messages and Freedom of Speech in the Internet Age

Canadian Association of Statutory Human Rights Agencies (CASHRA)
2008 Annual Conference

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Niagara College
Niagara-on-the-Lake, Ontario

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Thank you very much.

It is certainly energizing to be part of a conference that endeavours to lay a foundation for a more collaborative and interdependent approach to Human Rights.

Coming together to share ideas and identify goals is essential to successfully influencing a positive shift in the culture of human rights.

We can also draw strength from the knowledge that our interdependence and our network extend beyond our borders.

Sixty years ago, the Universal Declaration of Human Rights (UDHR) united the world in recognizing values that transcend cultures and traditions. Its commitment to universal dignity and justice continues to resonate with all us.

The founding principles of the Declaration continue to provide inspiration; it is our collective perseverance, innovation and evolution that advance our cause.

Sharing common goals means that we also share common challenges.

As human rights bodies, we must recognize, adapt and respond to change. Our progress is measured by our ability to be an effective influence within our rapidly-changing society.

The Internet has created possibilities that nobody can yet fully comprehend. Still in its relative infancy, its pervasive influence has already had a profound impact.

In 2001, section 13 of the *Canadian Human Rights Act* (CHRA) was amended to prohibit the use of the Internet or other communication tools for hatred purposes or discrimination. This section empowers the Commission to deal with complaints regarding the communication of hate messages by telephone or on the Internet.

The rapid shift from print to electronic news meant that the media began operating inside the jurisdiction of section 13. The implications of this shift with regard to the application of section 13 were, perhaps, not fully foreseen when the Act was amended.

Seven years later, growing public interest and continued advances in technology all point to a need to examine issues surrounding hate on the Internet.

From time to time, finding the right balance between freedom of expression and protecting citizens from discrimination becomes part of our national dialogue.

In recent months, the debate has been joined anew. Human rights bodies have been the focus of a discussion on how to balance freedom of expression with the need to protect Canadians from hate messages in the Internet age.

Much of the discussion has, of course, focused on the 2001 amendments to section 13 of the *Canadian Human Rights Act*.

Let me first say that the Commission welcomes this discussion. Debate is a vital component of our democratic process. It plays an important role in ensuring that our laws and legislation continue to be effective.

Freedom of expression is the foundation of a free, open and inclusive society. It must be preserved.

In the back-and-forth of public debate everyone should be able, without fear, to say or write things with which others may disagree and even find offensive.

It is also a cornerstone of human rights. This principle, coupled with an ardent belief in equality and freedom from discrimination has had a positive and profound influence on the evolution of the society in which we live.

What is not permissible, however, is to use free speech as a cover for hatred. A free and democratic society must establish a line between free expression and hatred.

That is why we must remain faithful to principles that endure. Those, for instance, contained in the Universal Declaration of Human Rights. And also those that have been shaped in our country - a world-recognized leader in

human rights.

At the federal level, the line between hate and freedom of expression was defined by Parliament when it passed the *Canadian Human Rights Act* in 1977.

The Supreme Court of Canada later confirmed it in the 1990 Taylor decision. In the Taylor case, the Supreme Court found that section 13 of the CHRA *did indeed* restrict freedom of expression. However, section 1 of the Charter provides that rights and freedoms are subject to reasonable limits.

In determining whether section 13 constituted a reasonable limit, Chief Justice Brian Dickson concluded that the types of messages targeted by section 13:

> ... undermine(s) the dignity and self-worth of target group members and, more generally, contributes to disharmonious relations among various racial, cultural and religious groups, as a result eroding the tolerance and open-mindedness that must flourish in a multicultural society which is committed to the idea of equality.

Canada is not alone. We are part of a global consensus, which observes that careful restrictions of some forms of speech are both desirable and necessary.

The International Covenant on Civil and Political Rights, adopted by the UN in 1966, provides that freedom of expression *carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, ...*

The Convention also requires states to prohibit by law:

> Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

As you can see, this is not a debate unique to Canada.

The international community has come together and reached a consensus on these principles. They serve as our inspiration. E nsuring that these principles continue to contribute to the health of our society depends on our ability to perservere, innovate, and evolve.

It is evolution – or the makings of evolution – that I am here to discuss today.

The Commission is dedicated to ensuring that the *Canadian Human Rights Act* remains effective. Legislation must evolve – when necessary – to respond and reflect changes in our society. We take seriously the role envisaged for us in section 27 of the Act, which permits us to act in an advisory role to Parliament.

But first, in order to lead and influence an informed debate we must ensure that we have insight into the issues.

Therefore, this morning I am announcing the immediate launch by the Canadian Human Rights Commission of a comprehensive policy review of how to best deal with hate on the Internet. This will include a review of section 13 and the role of the Commission.

As an integral component of the broader policy review, the Commission has retained leading constitutional law expert Richard Moon to conduct an independent study.

Professor Moon is a prominent expert on freedom of expression, freedom of conscience and religion, and the structural aspects of constitutional rights protection. He is the author of the seminal book, *"The Constitutional Protection of Freedom of Expression"*.

His many publications on freedom of expression and freedom of religion are widely read and respected and his work has informed generations of law students in Canada and United States. Professor Moon teaches Law at Windsor University.

His study will include an examination of existing statutory and regulatory mechanisms. It will also consider the mandates of human rights commissions and tribunals, and other government institutions involved with addressing hate messages on the Internet. Also important, his study will consider whether other governmental or non-governmental organizations could play a role in addressing hate on the Internet.

His independent expert report will, together with our own research, inform the Commission's future representations to Parliament.

As I have said before, the Commission recognizes the current discussion as a vital component of our democratic process. We are confident that this comprehensive review will move the discourse one step further.

Only then can we have a truly informed debate. It is a debate we should all be eager to learn from and participate in. And it is also one that will benefit all of our organizations, and indeed all Canadians, as we progress through a time of great technological change. As in the past, I am confident that we will rise to the occasion of serving as a beacon to the world.

Thank you.

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